DOCKET NO.: FBT-CV-19-6090047-S	:	SUPERIOR COURT
	:	
BETH LAZAR ET AL.	:	
	:	
Plaintiffs,	:	JUDICIAL DISTRICT
	:	OF FAIRFIELD
VS.	:	
	:	AT BRIDGEPORT
JOSEPH P. GANIM ET AL.,	:	
	:	
Defendants.	:	OCTOBER 14, 2019

PLAINTIFFS' POST-HEARING BRIEF

Plaintiffs Beth Lazar, Annette Goodridge and Vanessa Liles (collectively "Plaintiffs") hereby submit this post-hearing brief as requested by the Court. As established at the hearing and discussed further below, there was a mistake in the count of the votes cast at the Bridgeport Democratic primary election held on September 10, 2019 (the "Primary") due to substantial violations of the election statutes.[1] As a result of the violations and mistakes, the reliability of the results of the Primary are seriously in doubt and this Court must order a new primary.

I. PRELIMINARY STATEMENT

"As long as I count the Votes, what are you going to do about it?" This is a poignant quote from a cartoon depiction of Boss Tweed from 1871, which also depicted a ballot box on which the words "In Counting There is Strength" were inscribed.[2] Former Nicaraguan dictator Anastasio Somoza expressed a similar sentiment when addressing an opponent who accused

[1] Plaintiffs do not waive their claim that they were aggrieved by rulings of election officials pursuant to § 9-320a(a)(1). However, based on the Court's ruling on Defendants' Motion to Dismiss, the discussion herein is limited to mistakes in the count of votes under § 9-320a(a)(2).

[2] Library of Congress, available at https://www.loc.gov/resource/ds.12564/ (originally published in Harper's Weekly, October 7, 1871).

him of rigging an election, stating: "Indeed, you won the elections, but I won the count."[3] Here and now in Connecticut, it appears that Mayor Ganim and other Line A candidates lost the election at the polls but won the count with absentee ballots.

An election is the paradigm of "the democratic process designed to ascertain and implement the will of the people." In re Election for Second Congressional District, 231 Conn. 602, 625 (1994). Our electorate has a powerful interest in the integrity and accuracy of our elections. To safeguard this interest, the legislature has enacted statutes "to ensure the true and most accurate count possible of the votes for the candidates in the election." Id., at 633. With respect to absentee voting specifically, our Supreme Court has recognized "considerable room for fraud in absentee voting and that a failure to comply with the regulatory provisions governing absentee voting increases the opportunity for fraud." Wrinn v. Dunleavy, 186 Conn. 125, 142–44 (1982) (internal citations omitted). As a result, compliance with the election statutes is mandatory, and ballots generated as a result of statutory violations should be invalidated. Id at 146.

The City of Bridgeport has a significant history of lawsuits arising from the failure to comply with election statutes. *See, e.g.*, Keeley v. Ayala, 328 Conn. 393, 403-404 (2018); Caruso v. Bridgeport, 285 Conn. 618 (2008). Just last election cycle, this very Court had to order *two* new primaries as a result of absentee ballot abuse and fraud. See Keeley v. Ayala, FBT-CV17-6067082-S ("Keeley"). In Keeley, Defendant Clemons testified that he had signed an affidavit that he did not in fact sign, and then pleaded the Fifth Amendment when questioned further. Id., Entry No. 139.00, Transcript of November 30, 2017 Court Ruling, p. 4. The following day, the defendants in Keeley agreed to have a new special primary for a city

[3] See https://www.independent.co.uk/news/uk/politics/should-the-man-with-the-most-votes-win-622586.html, originally quoted by the Guardian (London), 17 June 1977.

council seat. Id. This Court *again* had to order a new primary because of absentee ballot irregularities. Id. at 20. The Court held that it was "persuaded even beyond a reasonable doubt that there were substantial violations of the law and statutes" which casted the result of the special primary in serious doubt. Id. That decision was upheld by our Supreme Court. Keeley v. Ayala, 328 Conn. 393 (2018).

Unfortunately, this year was no different. The Democratic primary held on September 10, 2019 was rife with problems and substantial violations of our election statutes dealing with absentee ballots. This failure to comply with our election statutes resulted in a mistake in the count of a vote in that votes were included in the count that should not have been counted. The absentee ballot head moderator did not even comply with the basic provisions for how to count absentee ballots. Accordingly, the reliability of the results of the Primary are in serious doubt.

As in Keeley, the evidence at trial established substantial violations of elections statutes and corresponding miscounting of votes such that the results of the Primary are cast in serious doubt. Many absentee ballots were illegally possessed, mailed and/or submitted in violation of law. Counting procedures required to protect the integrity of the election were not followed. As is apparent from the absentee ballot log and the testimony of various witnesses, scores of absentee ballot applications were signed out by various persons associated with the endorsed candidates without being accounted for with the Clerk's office via its Application Log or Distribution Lists. As evidenced by the inconsistencies between the Distribution Lists and the testimony of the canvassers, numerous applications were filled out without the person "assisting" with the application signing in violation of law. At least several paid canvassers were deployed to distribute applications in direct violation of the law. Numerous voters cast their ballots by absentee who weren't even arguably qualified to cast them. All of this takes

away from the reliability of the election results. In order to protect the integrity of our elections, both the offending candidates and city officials must be held to account.[4]

II. BACKGROUND AND PROPOSED FINDINGS OF FACT

The September 10, 2019 Primary was held to determine the candidates for office for the November 2019 general election. A total number of 9,058 persons voted for mayor at polling stations in the Democratic Primary. At the Primary, challenger Marilyn Moore received 4,721 machine votes and incumbent Mayor Joseph Ganim ("Mayor Ganim") received 4,337 machine votes. A total number of 1,280 absentee ballots were cast, with Marilyn Moore receiving 313 of the absentee ballot votes and Ganim receiving 967 of the absentee ballot votes. The final totals were 5,304 for Mayor Ganim and 5,034 for Moore, representing a difference of 270 votes.[5]

The evidence adduced at trial revealed the following facts and reasonable inferences drawn therefrom. The Bridgeport Clerk's office is provided individually numbered absentee ballot applications by the Office of the Secretary of State. According to law and Clerk's office policy, individuals may take applications from the Clerk's office for distribution, but must sign them out particularly if taking out over five (5) at once. The Clerk's office is required to log the number of applications signed out and the names individual signing them out. The individual must then log the names of the voters to whom each application is distributed, then returned unused applications to the Clerk's office.

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[4] Enforcement by the SEEC appears to be entirely ineffective. Similar abuse has been occurring for at least ten years, yet nothing changes. As just one example, Defendant Martinez was fined by the SEEC for absentee ballot abuse for conduct occurring in 2009. The investigation was not completed until two years after the primary, and clearly did not act as a deterrent. Another absentee ballot abuse case was not resolved for approximately seven years. See *Gonzalez v. State Elections Enforcement Commission*, 145 Conn. App. 458, 462, 77 A.3d 790, 793 (2013).

[5] Incredibly, the difference in votes is identical to that of another Bridgeport election, *Caruso v. Bridgeport*, 285 Conn. 618 (2008).

The Assistant Clerk testified that the Clerk's office supposedly gives out a packet of information containing the statutory requirements imposed on those distributing applications or assisting others with filling them out. However, only two (2) witnesses (Wong, Pereira) out of others who were involved with the distribution of applications (Heredia, Cox, Martinez, Villacres, Cruz) testified that they were even aware of these statutory requirements. Two witnesses (Heredia, Cox) showed that they were not even aware of the eligibility requirements when asking potential voters to sign their names to these applications. No witnesses testified that any of them were given any training or direction by their respective campaigns on how to properly follow the rules in distributing the applications or assisting others in filling them out, even though that appears to be a significant part of their job descriptions. Only three witnesses who distributed absentee ballot applications (Wong, Pereira, Villacres) had submitted the required Distribution Lists back to the Clerk's office indicating to whom they had given out applications. There is no evidence that the remaining witnesses who distributed applications kept any track of doing so.

Starting in December 2018 and throughout the Primary, over two thousand applications for absentee ballots were signed out from the Clerk's office. Many of the individuals signing them out were associated with the candidates endorsed by the Democratic Town Committee ("Endorsed Candidates" or "Line A Candidates"). Scores of applications were simply given to the Ganim for Mayor Headquarters so others, whose names were unaccounted for at the Clerk's office, could distribute them.

The testimony revealed that the strategy of the Bridgeport Democratic Town Committee was to deploy paid canvassers to neighborhoods containing apartments and go door-to-door asking potential voters to sign their names on absentee ballot applications, which such

canvassers would assist in filling out or fill out themselves. Ms. Heredia testified that not only was her only job description to distribute and collect absentee ballot applications, in violation of § 9-140(j) of the General Statutes, but that Daniel Roach, a central figure in the Mayor Ganim's campaign, gave her checks for her illegal canvassing work. Most canvassers who testified did not keep track of the applications being distributed or collected as required by law. Instead of returning completed absentee ballot applications to the Clerk's office, most canvassers were required to return them to campaign headquarters first. Only after that, and the canvassers paid, did the applications make it to the Clerk's office.

The applications which eventually make their way to the Clerk's office were rife with errors, illegalities and outright fraud. For example, there were forged signatures (Goodridge, Exhibit 8; Machado, Exhibit 18; and Walter, Exhibits 51-52), two applications with the same signature (Arianna Gomes and Gabriela Gomes), an application with no signature (Carmen Santiago), incorrect addresses, birth dates, and other information which should have been known to the voter, among other irregularities. See Exhibit 70A, to be finalized after completion of the Court's rulings on Plaintiffs' offer of proof. For example, as an illustration of the widespread statutory violations, Plaintiffs submitted thirty-three applications that did not contain a bona fide mailing address, six applications that did not contain proper signatures, evidence of over thirty applications where the appropriate paperwork was not filed with the Town Clerk's office, and twelve applications that were completed by unauthorized persons. When it came time to conduct the count of the absentee ballots, the Absentee Ballot Head moderator failed to comply with the statutory mandates for doing so. Such fraud, errors, illegalities and irregularities are discussed in further detail below.

Plaintiffs, electors of the City of Bridgeport, brought this action to address significant absentee ballot abuse and violations of other elections statutes. The evidence at trial established extensive illegal activity and abuse amounting to the extent that it casts the Primary results in serious doubt. In particular, Plaintiffs established the following: (1) votes were counted in violation of the counting procedures required by Conn. Gen. Stat. § 9-150a; (2) absentee ballots were mistakenly counted from electors not registered or qualified to cast them in violation of Conn. Gen. Stat. §§ 9-135 and 9-140; (3) absentee ballots were mistakenly counted when the applications for such ballots did not comply with Conn. Gen. Stat. § 9-140; (4) absentee ballots illegally possessed, mailed and/or submitted in violation of Conn. Gen. Stat. §§ 9-140b(a) and 9-140b(d) were mistakenly counted; (5) mistakenly counting the earlier absentee ballot issued to an applicant instead of the later absentee ballots in violation of Conn. Gen. Stat. § 9-153b(c); (6) ballots that were indicated as received by the clerk's office after the date of the Primary were mistakenly counted; (7) ballots solicited through paid canvassers in violation of § 9-140(j) were mistakenly and (8) duplicate absentee ballots received from the same person and were not processed by the Clerk's office appropriately.

III. LEGAL ARGUMENT

A. Standard and General Principles of Election Laws

Adherence to election laws rests on "the bedrock principle that the purpose of the voting process is to ascertain the intent of the voters." Id., at 621. Although "a court should be very cautious before exercising its powers … to vacate the results of an election and to order a new election;" Bortner v. Woodridge, 250 Conn. 241, 253-54 (1999); noncompliance with elections laws designed to safeguard the fairness of elections is a proper ground to order a new primary or election. Keeley v. Ayala, 328 Conn. 393, 416 (2018). In order for a court to overturn the results

of an election and order a new election pursuant to § 9-328, the court must be persuaded that: (1) there were substantial violations of the requirements of the statute and (2) as a result of those violations, the reliability of the result of the election is seriously in doubt. *See, e.g.*, Bortner, 250 Conn. at 258; *see also* Keeley v. Ayala, 328 Conn. 393, 403-04 (2018).

> "Absentee balloting . . . is a special type of voting procedure established by the legislature for those otherwise qualified voters who for one or more of the [statutorily] authorized reasons are unable to cast their ballots at the regular polling place. . . . The right to vote by absentee ballot is a special privilege granted by the legislature, exercisable only under special and specified conditions to [e]nsure the secrecy of the ballot and the fairness of voting by persons in this class. . . . ***[T]he procedures required by the absentee voting laws serve the purposes of enfranchising qualified voters, preserving ballot secrecy, preventing fraud, and achieving a reasonably prompt determination of election results.*** This court previously has recognized that there is considerable room for fraud in absentee [ballot] voting and that a failure to comply with the regulatory provisions governing absentee [ballot] voting increases the opportunity for fraud."
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> Keeley v. Ayala, 328 Conn. 393, 403-404 (2018).

Further, "[i]n the absence of direct evidence, the trier is entitled to draw reasonable and logical inferences, and its conclusion must stand unless no reasonable person could reach it." Bruce v. McElhannon, 141 Conn. 44, 47 (1954). "[T]riers of fact must often rely on circumstantial evidence and draw inferences from it ... There is no rule of law which forbids the resting of an inference on facts whose determination is the result of other inferences." (Citation omitted.) Blados v. Blados, supra, 151 Conn. 395 (1964).

> "Proof of a material fact by inference need not be so conclusive as to exclude every other hypothesis. It is sufficient if the evidence produces in the mind of the trier a reasonable belief in the probability of the existence of the material fact.... In short, the court, as fact finder, may draw whatever inferences from the evidence or facts established by the evidence it deems to be reasonable and logical."

Keeley v. Ayala, 328 Conn. 393, 419–20 (2018).

B. Rules of Statutory Construction.

"The process of statutory interpretation involves a reasoned search for the intention of the legislature." *Frillici v. Westport*, 231 Conn. 418, 431 557 (1994). "In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of this case, including the question of whether the language actually does apply. In seeking to determine that meaning, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter. *Id*.; Carpenteri–Waddington, Inc. v. Commissioner of Revenue Services, 231 Conn. 355, 362, 650 A.2d 147 (1994); United Illuminating Co. v. Groppo,220 Conn. 749, 755–56, 601 A.2d 1005 (1992)." (Internal quotation marks omitted.) United Illuminating Co. v. New Haven, 240 Conn. 422, 431–32, 692 A.2d 742 (1997). "If a statute . . . does not sufficiently define a term, it is appropriate to look to the common understanding of the term as expressed in a dictionary." (Internal quotation marks omitted.) Kendall v. Comm'r of Correction, 162 Conn. App. 23, 38 (2015).

Importantly, our state Supreme Court has had the opportunity to interpret our absentee ballot laws. "[T]he right to vote is not absolute and is subject to regulation by the legislature." Wrinn v. Dunleavy, 186 Conn. 125, 142 (1982). **Ballots which are generated as a result of statutory violations should be invalidated**. Wrinn v. Dunleavy, 186 Conn. 125, 146.

> "Had the legislature intended that such clearly mandatory language not require the invalidation of a ballot not conforming to the statutory requirements, it could have so specified as it has in other sections of the absentee voting chapter. In § 9-138, for example, which requires that the elector or an authorized agent sign and date the statement on the ballot's inner envelope, the legislature specifically provided that "(t)he failure of such applicant or such authorized agent to date such form shall not invalidate the ballot." An example of another type of saving provision employed by the legislature is found in § 9-145 which states: "No absentee ballot shall be rejected as a marked ballot

> unless such ballot, in the opinion of the moderator, was marked in such way for the purpose of providing a means for its identification." **The absence of any type of saving provision in connection with the mailing requirements of § 9-146(b) leads to the conclusion that these requirements are mandatory and that noncompliance with them requires the invalidation of such a ballot**."
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> Wrinn v. Dunleavy, 186 Conn. 125, 146 (1982) (Emphasis added).

For this reason, if a ballot comes within the prohibition of an election statute, *particularly* one without a saving provision, it is considered void. Id. In the present matter, Plaintiffs have shown that in a matter of four (4) days, they were able to uncover and present to the court evidence of widespread violations of statutes governing absentee balloting, most of which do *not* have saving provisions.

C. Definition of Mistake in the Count of the Vote.

Webster-Merriam's Dictionary defines a mistake as "a wrong judgment: MISUNDERSTANDING" and "a wrong action or statement proceeding from faulty judgment, inadequate knowledge, or inattention". *See* Merriam-Webster Online Dictionary available at: https://www.merriam-webster.com/dictionary/mistake. Similarly, Black's Law Dictionary defines a mistake as "[a]n error, misconception, or misunderstanding; an erroneous belief." Black's Law Dictionary (11th ed. 2019).

Case law supports the use of a comprehensive definition of mistake. In Bortner v. Woodbridge, *supra*, the Supreme Court considered what constitutes a mistake in the count of the vote as set forth in Conn. Gen. Stat. § 9-328, which has language nearly identical language to § 9-329. In Bortner, the Connecticut Supreme Court expressly rejected the defendants' argument "that the statutory language only covers a situation in which votes that were cast were improperly counted", much like Defendants claim here. Id. at 272 n.27. The Connecticut Supreme Court explained that "**[i]f otherwise validly cast ballots were not counted, the resulting total number of votes for each candidate may be regarded as a 'mistake in the**

count of the votes.' Second, one of the purposes of the statute, namely to ensure accuracy in the election process, suggests the broader interpretation." Id (emphasis added).

The Bortner court also examined the legislative debate from a 1987 amendment to Conn. Gen. Stat. § 9-328, noting that:

> "[the] debate indicates a legislative intent that, although a candidate who challenges an election need not necessarily prove that he would have won the election but for the improprieties that he established, he would be required, in the language of the debate, to prove that there were 'substantial violations [that] . . . might change the results, and . . . if unclear, but . . . substantial, the judge could order a new election . . . if he believed that the election was so compromised that that was the best . . . remedy."

Id. at 262 *citing* 30 H.R. Proc., Pt. 30, 1982 Sess., pp. 11,023-24, remarks of Representative Robert F. Frankel and Martin M. Looney. The Connecticut Supreme Court reached a similar result in Bauer v. Souto, 227 Conn. 829 (2006). *See also* Rutkowski v. Marrocco, HHD-CV-13-6046652-S, 2013 WL 6916610 (Super. Ct. Dec. 3, 2013) (failure to record votes due to the use of the wrong ballots constituted a "mistake in the counting of votes" within the meaning of Conn. Gen. Stat. § 9-328). Finally, relying on Bortner and Bauer, the Superior Court for the Judicial District of Hartford determined that the failure to record votes due to the use of the wrong ballots constituted a "mistake in the counting of votes" within the meaning of Conn. Gen. Stat. § 9-328. Rutkowski v. Marrocco, HHD-CV-13-6046652-S, 2013 WL 6916610 (Super. Ct. Dec. 3, 2013).

It is clear, therefore, that a mistake in the count of the votes is more than a simple failure to properly count the votes cast. The conclusions of Bortner, Bauer and Rutskowski, as well as those of this Court, are in accord with a broader interpretation used to ensure accuracy in the election process, not merely correct for clerical errors. They are also in according with the dictionary definition of a mistake which includes any "wrong action" or

"error", not merely one based on clerical errors or mathematical miscalculations. Thus, in those cases, the mistake was that the counters had no knowledge of the malfunctioning equipment at the time the count was conducted and thus involved a wrong action due to inadequate knowledge.

This Court's finding that counting ballots that should not have been counted as a matter of law is a mistake in the count of the vote is likewise consistent with the dictionary definition of "mistake" and the decisions considering what constitutes a mistake in the count of a vote. As an example, this Court explained that absentee ballots issued by electors who were not eligible to vote by absentee ballots would be considered a mistake in the count of the votes. This Court's determination is also in accord with existing caselaw evaluating the submission of absentee ballots that did not comply with the statutory mandates.

Accordingly, other ballots generated as a result of statutory violations should be invalidated. For all these reasons, any votes issued that did not comply with the mandatory statutory requirements constitutes a mistake in the count.

D. Substantial Violations of the Election Statutes Established at Trial.

Given the numerous and substantial violations of the election statutes established at trial, this Court can only come to the conclusion that the result of the Primary is seriously in doubt.

1. The Head Absentee Ballot Moderator Failed to Count Absentee Ballots as required by Conn. Gen. Stat. § 9-150a.

Conn. Gen. Stat. § 9-150a sets forth the absentee ballot counting procedures in detail. Conn. Gen. Stat. § 9-150a(h) states that "[t]he Secretary of the State shall provide a procedure manual for counting absentee ballots. The manual shall include a description of the steps to be followed in receiving, handling, counting and preserving absentee ballots. . ." Exhibit 48 is the procedure manual (the "Manual") governing Defendant Thomas Errichetti's duties in counting

absentee ballots. The manual provides that the "***procedure for counting absentee ballots must be strictly adhered to. The election laws describe in detail the manner and method by which the absentee ballots are to be received, handled, counted and preserved***. This Manual describes the steps to follow. Absentee ballot counters should refer to the Manual during the process." *See* Exhibit 48, at p. 9-10 (emphasis added).

Despite these requirements, Mr. Errichetti acknowledged that he did not have the manual present with him during the counting of the absentee ballot votes of the Primary. Not only that, it is clear from Mr. Errichetti's testimony that he did not comply with the procedure for counting absentee ballots. In particular, he and his counters did not comply with Steps 7 and 9. *Id*. at p. 11-12. Step 7 requires that when removing the absentee ballots from the inner envelopes, the counter must leave "them folded so that the markings cannot be seen. This is required to preserve the secrecy of the vote." Step 9 requires the counter to "[s]huffle the folded ballots and then unfold them."

The failure by Defendant Errichetti to comply with the procedures for counting absentee ballots is fatal to Defendants' position. Conn. Gen. Stat. § 9-150a and the corresponding manual uses the word "shall." While the use of the word shall is not dispositive of whether a statute is mandatory, "[t]The legislature's use of the word 'shall' suggests a mandatory command," Southwick at Milford Condominium Assn., Inc. v. 523 Wheelers Farm Road, Milford, LLC, 294 Conn. 311, 319–20 (2009).

In the context of elections, failure to abide by mandatory provisions results in invalidation of the ballots which were subject to those violations. Wrinn v. Dunleavy, 186 Conn. 125, 146 (1982). As noted above, "there is considerable room for fraud in absentee [ballot] voting and that a failure to comply with the regulatory provisions governing absentee [ballot]

voting increases the opportunity for fraud." Keeley v. Ayala, 328 Conn. 393, 403-404 (2018); *see also* Dombkowski v. Messier, 164 Conn. 204, 209 (1972). In Dombkowski, the Connecticut Supreme Court concluded that the provisions of Conn. Gen. Stat. § 9-148 were mandatory. In doing so, it explained that "where the legislature has provided mandatory requirements specifically designed to prevent fraud, at least substantial compliance with such statutes is necessary." Id. Dombkowski specifically held that the failure of the town clerk to endorse date and precise time of receipt of absentee ballots on outer envelope of ballots voided absentee ballots and ballots could not be cast by moderator in election for office. Id.

Both Conn. Gen. Stat. § 9-150a and the Manual use the word "shall", and the Manual expressly state that its provisions are not just mandatory but "***must be strictly adhered to.***" *See* Exhibit 48, at p. 9-10 (emphasis added). Given Mr. Errichetti's failure to comply with the requirements of the Manual, the absentee ballot votes must be voided—just as they were in Dombkowski and Wrinn—and the inclusion of such votes constitutes a mistake in the count of the votes. Without following mandated established procedures, it is impossible to ensure the integrity of the election process.

2. The City Defendants mistakenly counted absentee ballots from electors not registered or qualified to cast them in violation of Conn. Gen. Stat. §§ 9-135 and 9-140.

Conn. Gen. Stat. § 9-135 sets forth who is eligible to vote by absentee ballot. As Callie Heilmann's testimony showed, **out of the first approximately fifty (50) people that the Plaintiffs spoke with in *just four days* before bringing the lawsuit, there was already evidence of widespread statutory violations.**

At the hearing, Plaintiffs presented testimony of numerous witnesses whose testimony showed they were not eligible to vote by absentee ballot (Kadeem Graham, Donna McNamara,

Annette Goodridge, Dennis Ellis, Jeanette Ruiz, Migdalia Concepcion, Lucy Machado, Krystal DeLeon, Zanaida Colon, Hera Powell, Richard Christo). See also Exhibits 1, 4-5, 8-9, 11, 13, and 18-22. One, Goodridge, even testified that her whole household (4 adults) voted by absentee ballots, and none of them were eligible as far as she knew to do so.

Almost all witnesses testified that someone else completed the absentee ballot application for them and that they merely signed their names—without ever being asked any of the eligibility questions (Graham, McNamara, Victoriano Rodriguez, Goodridge, Ellis, Ruiz, Concepcion, Machado, DeLeon, Colon, Powell, Christo, Rosali Rivera). See also Exhibits 1, 4-5, 7, 8—9, 11, 13, 18-22 and 53.

In many of the cases, these witnesses also did not comply with the mailing requirements of Conn. Gen. Stat. § 9-146(b). Plaintiffs presented the evidence of six (6) witnesses who all testified that their alleged ballots were *taken from their hands* – as in, not properly mailed by themselves or their designee or immediate family member (Graham, Rodriguez, Goodridge, Ellis, Bohannon, Ruth Walter). Such ballots clearly do not comply with the election statutes and those generated and sent in violation of the law constitute a mistake in the count of the vote.

3. The City Defendants mistakenly counted absentee ballots issued even though the corresponding application did not comply with Conn. Gen. Stat. § 9-140.

Just as it is a mistake in the count of the vote to count ballots of electors ineligible to vote by absentee balance, it is a mistake in the count of the vote to include ballots that were issued in response to applications that did not comply with Conn. Gen. Stat. § 9-140. Both situations depend on the accuracy of the absentee ballot application. Conn. Gen. Stat. § 9-140(a)(3) provides that "[i]f the ballot is to be mailed to the applicant, the applicant ***shall list*** the bona fide personal mailing address in the appropriate space on the application." Conn. Gen. Stat. § 9-140(g) provides that "[a]ny absentee voting set to be mailed to an applicant ***shall be mailed*** to

the bona fide personal mailing address ***shown on the application***." Plaintiffs submitted thirty-three applications that did not contain a bona fide mailing address.[6]

Conn. Gen. Stat. § 9-140(c) provides that the clerk "shall check the name on each absentee ballot against the last-completed registry list and any updated registry list on file in the municipal clerk's office. If the name of such applicant does not appear on nay such lists" the clerk is required to send a notice to the applicant of such issue, and an absentee ballot "will not be mailed to him" unless the applicant is restored as an elector. Plaintiffs submitted six applications that did not contain the proper signature.[7]

The Assistant Town Clerk, Christina Resto, testified that the clerk's office would not issue an absentee ballot if the application contained an incorrect address nor would a ballot be issued if the name of the applicant was not in the database. Instead, she said the applicant would be issued a notice of a deficiency and an opportunity to make an appropriate correction. Nonetheless, when confronted with applications that did not contain the proper address, Ms. Resto testified that if the address is close, she will take it upon herself to fix the address on the application and mail out a ballot. She also expressed a similar process was used when names were incorrect.

Conn. Gen. Stat. § 9-140(a) also provides that the application "shall be signed" by the applicant, and if the applicant is unable to write, he or she may "cause the application to be

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[6] See Exhibit 70A: Carmen Perez; Haria Stovall; Damien Brown; Santo Soler; Carolyn Thompson; Amos Williams; Daisy Lee; Maribel Santos; Teodora Soto; Luz Sanchez; Lucy Clayton; Jose Lopez; Jose Lopez (separate individual); Maria Stovall; Terry Sanders; Delores Laws; Willie Lane; Maria Martinez; Tyquest Lambert; Shaques Harris; Davonne Harris; Tyra Stewart; Olga Lopez; Anthony Lott; Orlando Lopez; Helen Sacks; Ikse Levi; Sandra Collins; Maria Martinez; Angelo Reyes; Angela Reyes; Annie Rascoe and Maria Rivera.

[7] See Exhibit 70A Shekia Bond; Cora Martonak; Romane Spain; Maria Martinez; Santa Orozco; and Daniel Merlo.

completed by an authorized agent who shall . . . write the date and name of the absentee ballot applicant followed by the word 'by' and his own signature." Despite this requirement, the Bridgeport Town Clerk's office issued an application to Carmen Santiago even though her application was not signed. *See* Exhibit 70a.

There can be no doubt the reason an application must contain the proper name, signature and be sent to the bona fide mailing address listed on the application is to safeguard against fraud in the absentee balance application process. Not only does the Bridgeport Town Clerk not follow these statutory mandates, the office of the Town Clerk does not even follow its own procedures. Accordingly, absentee ballots should never have been issued to people who did not provide a bona fide mailing address on the applications and did not provide the correct name. Any inclusion of such ballots constitutes a mistake in the count of the vote.

Plaintiffs also presented evidence of absentee ballot applications that were processed and counted even though they were distributed by persons who failed to maintain a list of the names and addresses of prospective absentee ballot applicants in violation of Conn. Gen. Stat. § 9-140(k)(2). In particular, Nilsa Heredia testified that she generated approximately "thirty-something" of such ballot applications, but failed to file the appropriate paperwork with the Town Clerk's office. See Exhibit 24. Finally, Plaintiffs provided evidence of twelve individuals whose applications were completed by unauthorized persons in violation of Conn. Gen. Stat. § 9-140(a). See Exhibits 1 (Graham), 4-5 (McNamara), 7 (Rodriguez), 8 (Goodridge), 9 (Ellis), 11 (Ruiz), 13 (Concepcion), 18 (Machado), 19 (DeLeon), 20 (Colon), 21 (Powell), 53 (Rivera). One witness, McNamara, testified she was asked by Defendant Jorge Cruz to simply sign her name to an application while he was in her building even after she had told him she had already signed another application, contradicting Mr. Cruz's testimony that he simply took out applications

from the Clerk's office but did not regularly insist or assist others in filling out applications himself. Further, as evidenced by the testimony of the paid canvassers, particularly Heredia and Cox, that they assisted others in filling out applications as part of their job descriptions but did not always sign their names in the appropriate section at the bottom of such applications, it is unclear how many applications were generated with assistance of campaign workers who did not indicate as such on the forms.

Finally, Plaintiffs provided evidence of individuals whose applications were completed by unauthorized persons in violation of Conn. Gen. Stat. § 9-140(a) (Goodridge, Machado, Walter). When a ballot is issued in response to an application that is fraudulent and thus fails to comply with the statutory requirements, such ballot should be voided and should have never been issued. Accordingly, their inclusion is a mistake in the count of the vote.

4. The City Defendants mistakenly counted the earlier absentee ballot issued to an applicant when duplicate ballots were issued.[8]

Conn. Gen. Stat. § 9-153b(c) expressly provides that "[w]hen an absentee ballot applicant has applied for more than one absentee ballot, ***only the latest absentee ballot issued*** to him by the municipal clerk as determined by the serial number appearing on the outer envelope may be counted and all absentee ballots and envelopes formerly issued to that applicant ***shall be marked rejected*** as provided in subsection (b) of this section ***and not counted***.

Despite such mandatory language, Ms. Resto testified that the Bridgeport Town Clerk's practice is to count the first issued balance in direct violation of Conn. Gen. Stat. § 9-153b. The decision to count such ballots is clearly a wrong action due to inadequate knowledge, and, as a result, a mistake in the count of the vote.

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[8] The Plaintiffs will present further argument on the issue of duplicate ballots issued and/or received by the Clerk's office in their Reply brief per the Court's instruction, after the remaining portions of Exhibit 70, currently marked for identification in part, are addressed by the Court.

There are numerous instances in the Clerk's records where the ballots *other* than the latest issued were counted in lieu of the proper ballot issued. One such example is Ruth Walter's; she does not recall getting a ballot before August 26th after she filled out what she believed to be her first application, then a ballot was hand-delivered to her the week before the election. **However, the Clerk's absentee ballot record only shows an application with a signature that is not hers dated August 13th – almost *two weeks* before she remembered filling out the first application**, and the absentee ballot report (Exhibit 16) shows an application received from her **August 14th**, and a ballot with envelope number 097942 mailed to her **August 20th**, ***which was almost a week before she remembers filling out an application for the first time***. Based on the absentee ballot report and Ms. Walter's testimony, there appears to have been at least two, if not three (with the third being hand-delivered to her), ballots issued altogether. The Clerk's records show that the first envelope #097942 was what was received and processed by the Clerk's office – *without any record of the subsequent ballot(s) issued*. Even if the signature on that envelope resembled the signature she remembered affixing to the application she testified was hers, the Clerk's office (1) did not accept her latest ballot, and (2) only kept track of the envelope number which was issued to the fraudulent application, with *zero* record of any other envelope number issued to Ms. Walter, including for the ballot(s) she actually remembers receiving and filling out. See Exhibit 70A, to be finalized after completion of the Court's rulings on Plaintiffs' offer of proof. If the Clerk's office was actually keeping track of all envelopes issued – which it is required to do and account to the Secretary of State – it would be almost impossible *not* to follow the law and properly process the latest ballot issued.

5. The City Defendants mistakenly counted ballots that were not mailed in accordance with Conn. Gen. Stat. § 9-140b.

Conn. Gen. Stat. § 9-140b(a) provides that "[a]n absentee ballot ***shall be cast at a primary***, election or referendum ***only if***: (1) It is mailed by (A) the ballot applicant, (B) a designee of a person who applies for an absentee ballot because of illness or physical disability, or (C) a member of the immediate family of an applicant who is a student, so that it is received by the clerk of the municipality in which the applicant is qualified to vote not later than the close of the polls; (2) it is returned by the applicant in person to the clerk by the day before a regular election, special election or primary or prior to the opening of the polls on the day of a referendum; (3) it is returned by a designee of an ill or physically disabled ballot applicant, in person, to said clerk not later than the close of the polls on the day of the election, primary or referendum . . ." Plaintiffs presented the evidence of witnesses who testified that their alleged ballots were not mailed by themselves or their designee or immediate family member.

Again, these requirements are mandatory and exist so as to protect against possible fraud in the processing of absentee ballots. *See* Wrinn v. Dunleavy, 186 Conn. 125 (1982) (ordering new election after determination was made that absentee ballots were void and should have not have been counted because they had been mailed by someone other than a person authorized by statute to do so even though the election official who counted such ballots had no knowledge of any impropriety). Since such ballots were not issued in compliance with the election statutes, such ballots are void and their inclusion in the count is a mistake in the count of the vote.

6. The City Defendants mistakenly counted ballots received by the Town Clerk's Office after the date of the primary.

Conn. Gen. Stat. § 9-140(a) requires the Town Clerk to maintain a log of all absentee ballot applications provided. Ms. Resto testified that Exhibit 16 is the City of Bridgeport's log

for the Primary. It includes the names of all alleged applicants, their addresses, date of birth, date the application received, date the ballots were sent, the assigned envelope number and the date the ballot was received. However, Bridgeport's records reveal that over 150 ballots were received on September 28, 2019—more than two weeks after the Primary. Any ballot received after the close of the polls should not be counted, and the decision to include the more than 150 ballots marked as received on September 28, 2019 is clearly a mistake in the count of the vote. In claiming "clerical error" the Defendants concede errors were made in keeping track of the ballots which were to be counted.

7. The City Defendants mistakenly counted absentee votes solicited through paid canvassers in violation of § 9-140(j)

General Statutes § 9-140(j) provides:

> No person shall pay or give any compensation to another and no person shall accept any compensation solely for (1) distributing absentee ballot applications obtained from a municipal clerk or the Secretary of the State or (2) assisting any person in the execution of an absentee ballot.

The evidence at trial established blatant violations of this statutory mandate. Two campaign workers testified that they were illegally paid to solicit votes by absentee ballot. Heredia's testimony further showed she never asked others about eligibility requirements, and had contradicting testimony about sometimes allowing the voter to fill out the eligibility section or that she sometimes filled it out. Though Cox testified that she asked people about whether they were disabled or ill (she did not mention that she asked them if any of the other 4 requirements were ever inquired about), that testimony was not credible. Her lack of credibility was exemplified by Dennis Ellis' testimony that when Cox showed up at his door (both in assistance for the application and to take his ballot from him), she did not mention eligibility requirements. Since not every campaign worker logged out applications or submitted distribution logs, the full extent of the illegally generated ballots is not easily known, but it was clear from

the testimony that violations of § 9-140(j) were rampant throughout the weeks and months leading up to the Primary.

Further, none of the campaign workers who testified indicated they had any training at all from the campaign or candidates as to how to go about distributing or assisting others with filling out applications for absentee ballots. If applications were logged out of the Clerk's office, there appears to be an information packet available, but Heredia, Edmonds, Cruz, and Cox's testimony indicated that they either did not read or were not provided the packet when given the applications or the job to distribute applications. This infers that there was a widespread effort to collect applications, without regard to the eligibility requirements or other statutory requirements for generating absentee ballot applications or votes.

Further, the Court is allowed to draw a reasonable inference from the number of witnesses who were identified in the week after the primary and who were able to testify in court that the Line A campaigns' efforts to generate absentee ballot votes without regard to eligibility or other requirements were successful.

8. The City mistakenly counted duplicate absentee ballots received from the same person.

The City Defendants were so deficient in their handling of absentee ballots that they even received and counted multiple ballots from the same person. Exhibits 30 and 31 contain two separate absentee ballot applications for the same person. In both cases, the application did not contain a bona fide mailing address which Ms. Resto testified she corrected because it was close enough. Exhibit 16, however, indicates that two separate ballots were received from Ms. Thompson. This is exactly the type of fraud the election statutes are designed to safeguard against. However, the failure of the City Defendants to comply with the statutory mandates lead to the mistaken counting of multiple ballots from Ms. Thompson.

E. The Reliability of the Primary is Seriously in Doubt and a New Primary is Warranted.

There can be no question that there were numerous and substantial violations of the requirements of our election statutes. Any one of the violations set forth above would be sufficient to cause doubt in the reliability of the election. The multiple violations of multiple aspects of our election statutes should lead this Court to only one conclusion—the reliability of the results of the Primary are seriously in doubt. At a minimum, given the multiple statutory violations across the election statutes, it is clear that "the election was so compromised that" a new primary is the best and only remedy." Bortner, at p. 262 *citing* 30 H.R. Proc., Pt. 30, 1982 Sess., pp. 11,023-24, remarks of Representative Robert F. Frankel and Martin M. Looney.

Courts in California have wrestled with similar problems and have found in favor of ordering a new primary when circumstantial evidence points to widespread violations of law.

> "[I]t is presently impossible to distinguish [the] illegal …absentee ballots from the remaining valid ballots cast in the consolidated elections. Thus, it cannot now be determined with mathematical certainty how the illegal votes on the illegal ballots were cast. The trial court recognized it could not deduct the illegal votes from the defendants to see who received a majority of lawful votes for each office…The trial court nevertheless concluded, "in light of the wholesale violation" of the absentee voting laws in this case — including (i) the section 1013 and section 1006 violations, (ii) the improper involvement of … "solicitors" and candidates themselves in soliciting absentee votes …(iii) [the] inability to account for 269 mailed absentee ballots which were never returned to the elections department in any form, and (iv) the fraud, tampering, and overreaching established with respect to the 93 ballots disqualified by clerk's challenge — that the evidence showed the great majority of illegal-but-counted … ballots were voted for the defendant-candidates, and were sufficient to affect the election of many of them."

Gooch v. Hendrix, 5 Cal. 4th 266, 284 (1993) (upholding the trial court's decision to order new elections)(internal citations omitted); *see, also,* Rogers v. Holder, 636 So. 2d 645, 647 (Miss. 1994) (new election warranted where there was "such a total departure from the fundamental

provisions of the statute as to destroy the integrity of the election and make the will of the qualified electors impossible to ascertain").

As noted above, Callie Heilmann testified that they were only able to dedicate four (4) days to talking to people who voted by absentee ballot before this lawsuit was filed, and they talked to approximately fifty (50) people at random. In addition, Plaintiffs submitted thirty-three applications that did not contain a bona fide mailing address, six applications that did not contain proper signatures, evidence of over thirty applications where the appropriate paperwork was not filed with the Town Clerk's office, and twelve applications that were completed by unauthorized persons, plus the remaining applications at issue in Plaintiffs' offer of proof. Given the widescale violations of the election statutes in the Primary, this Court is allowed to draw a reasonable inference that the efforts to generate absentee ballot votes without regard to eligibility or other requirements of the election statutes were successful and the violations were widespread.

Defendants should not be insulated from the consequences of their mistakes simply because of the sheer scale or frequency at which these violations and mistakes errors occurred, especially when the conduct was widespread. The strict requirements around record-keeping which encompass the process from distributing applications to counting them are in place specifically to hold those who act in violation of such laws to account. This is especially true given the fact that there was such poor record keeping evident along the entire process, from the canvassers who solicited absentee ballot applications to the Clerk's office which did not keep track of duplicate or subsequently-issued ballots to the failure to properly count the absentee ballots. The Court can draw its reasonable inferences from the evidence presented during these expedited proceedings.

Is it so difficult to expect campaigns to follow election laws? Or for a town clerk to properly record the applications and ballots which pass through their office? Is it too much for the City of Bridgeport to comply with the statutory requirements for counting absentee ballots? How can the electors of Bridgeport have faith in a system that is subject to fraud when the very statutes designed to enfranchise voters, preserve secrecy, prevent fraud and achieve a prompt determination are not complied with?

While voters have "a powerful interest in the stability of [an] election, the voters have an even more powerful interest in the integrity and accuracy of that election." Bortner. at p. 278. This honorable Court serves a vital role in protecting the rule of law and safeguarding electors to ensure that the will of the people is implemented in an election. That cannot be done unless the basic provisions of our election statutes are honored not just by the campaigns participating in elections but the municipal offices in charge of administering them. Accordingly, to safeguard our democracy, a new Primary must be ordered.

IV. CONCLUSION

For all these reasons, Plaintiffs respectfully request that the Court set aside the results of the Democratic Primary; order a new Special Primary Election for all candidates, including but not limited to the mayoral primary; order supervision of locations with a large percentage of voters voting by absentee ballot; order that the Democratic Primary absentee voting tabulators be unlocked, any ballot boxes, if any, be opened for inspection, and any application materials and/or affidavits relevant to absentee voting be made available for inspection; order that applicable statutory deadlines be stayed, including deadlines affecting the general election, be stayed in order to hold a new Special Primary Election; and order all additional relief in law or equity as the court may find just and equitable.

PLAINTIFFS,
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent this 14th day of October, 2019 by electronic mail and/or first-class mail to the following counsel/parties of record:

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